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UNCLAS MAPUTO 001539

SIPDIS

STATE FOR AF/S, AF/EPS, EB/IFD/OIA, E
MCC FOR APPLGARTH, HEWKO, BRIGGS, GAULL
STATE PASS OPIC FOR SHORE

SENSITIVE

E.O. 12958: N/A

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SUBJECT: MOZAMBIKAN ATTORNEY GENERAL REFERS NYATI LODGE CASE
TO HIGH COURT

Ref: Maputo 01446

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1. (SBU) On November 25, Attorney General Joaquim Madeira referred to the High Court of Mozambique a motion by Vilanculos Coastal Wildlife Sanctuary to suspend an October court order by Inhambane provincial judge Jose Sampaio that authorized expropriation of the Nyati Beach Lodge. The Lodge is co-owned by American investor David Herbert, who has received OPIC support for his investment. The Attorney General also recommended that the High Court suspend the provincial judge's earlier decision, which had enabled the Zimbabwean company Cabo do Mar to attempt several failed expropriations of Mr. Herbert's property based on an earlier land rights claim. Reftel provides details on the dispute. On November 23, Ambassador La Lime had met with the Attorney General to seek prompt action on the matter. The Attorney General had indicated that he would refer the case to the High Court with a recommendation to suspend the order.

2. (SBU) The Attorney General's move represents a positive step for Mr. Herbert in his efforts to protect his investment in the lodge. Over the past month, Mr. Herbert and his legal teams had made several unsuccessful attempts to obtain an order from Judge Sampaio suspending enforcement of his October order. Based on his perceived vulnerability, Mr. Herbert and his team had negotiated a \$650,000 settlement with Cabo do Mar on October 28 in exchange for Cabo do Mar's agreement never to evict them. This settlement has been drafted but has not been signed, and Cabo do Mar has responded by upping its cash demands. It also attempted to take over Nyati Lodge on November 17 and again on November 20, each time with a private security force in tow. The Cabo do Mar security forces were fended off without incident, but Mr. Herbert believed that, without a favorable decision by the Attorney General, he probably would have been forced to meet Cabo do Mar's demands in order to keep his business.

. (SBU) A referral to the High Court does not end the legal dispute between Cabo do Mar and Mr. Herbert. The High Court often takes months to decide cases, and Cabo do Mar is likely to attempt further evictions in the meantime. Mr. Herbert and his legal advisors believe that the Attorney General's decision to issue a recommendation along with the referral should help them, but admit that this is not always the case. Post believes that Mr. Herbert eventually will probably end up paying some form of settlement to Cabo do Mar in order to settle the issue of overlapping land claims. In any case, the Attorney General's decision should strengthen Mr. Herbert's position in his dealings with Cabo do Mar.

LA LIME